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PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/766,485
Applicant : Diionisio Rio Simoes
Filed : Jan. 19, 2001
Title : Instrument for the medical or dental treatment of children
TC/A.U. :
Examiner :

Docket No. : SIM3001/FJD
Customer No. : 23364

RENEWED PETITION UNDER 37 C.F.R. 1.137(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22202-3514

Sir:

This renewed petition is being filed in conjunction with a request for an earlier filing date under 35 U.S.C. § 120.

FACTS

- 1) Application No. 09/135,486 was filed on August 18, 1998 under 35 USC § 111. It had previously been filed as PCT/EP96/04945.
- 2) The petition under 37 CFR 1.137(b) was filed on January 19, 2001 to convert the originally filed PCT/EP96/0494 application, filed as a national phase application under 35 USC § 111, to a national phase application under 35 USC § 371 instead of 35 USC § 111.
- 3) Since the 09/135,486 application had issued as U.S. Patent No. 6,045,360 on April 4, 2000, a reissue application, No. 09/766,485 was filed on January 19, 2001 to provide a basis for the petition to revive..
- 4) The petition under 37 C.F.R. 1.137(b), filed on May 22, 2002 was dismissed by the decision rendered on June 19, 2002.
- 5) In the decision rendered on June 19, 2002 the issue of "deliberateness" was considered and found to be nonpersuasive so that the petition was dismissed **without prejudice**.

The entire prior proceeding was based upon Petitioner's request to convert the originally filed application to one under 35 U.S.C. § 371 rather than under 35 U.S.C. § 111 so that the benefit of the filing under PCT/EP96/04945 could be accorded to the U.S. national phase application. The focus of the revival should not be whether 35 USC § 111 or 35 USC § 371 was the proper vehicle for filing the national phase application (either one is correct), but to afford the patentee/reissue applicant the opportunity to proceed under 35 U.S.C. § 120 to claim the benefit of the filing under PCT/EP96/04945. The revival will create the necessary co-pendency so that 35 U.S.C. § 120 can be applied with the result that the filing date of the noted PCT application should be accorded to Application

No. 09/135,486 and/or reissue application no. 09/766,485.

Respectfully submitted,

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Date: September 8, 2004

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